

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:SB:SBerman
POSTF-121071-05

UILC: 6721.00-00, 6722.00-00, 6723.00-00, 6724.00-00, 6109.05-00

date: June 02, 2005

to: Doug Rogers, Chief, Penalties and Interest
(Small Business/Self-Employed)

from: Ronald D. Pinsky
Assistant Division Counsel, Tax Litigation-Examination
(Small Business/Self-Employed)

subject: Penalties for Invalid TINs on Schedules K-1

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

You asked which penalty may be asserted when a Schedule K-1 is submitted to the Internal Revenue Service with an incorrect Taxpayer Identification Number (TIN).

CONCLUSION

A penalty asserted under section 6723 would be the appropriate penalty to assert with respect to the furnishing of an incorrect TIN on a Form 1065 or Form 1120S Schedule K-1 that is submitted to the Internal Revenue Service.

LAW AND ANALYSIS

IRC § 6109 provides the Secretary of the Treasury with the authority to prescribe regulations requiring the inclusion of TINs on tax returns.

Treas. Reg. § 301.6109-1(b) establishes the requirement for persons to include their TINs on a tax return "as required by the forms and the accompanying instructions."

Treas. Reg. § 301.6109-1(c) establishes the requirement for persons to include the TINs of others on a tax return "as required by the forms and the accompanying instructions." This would include the requirement to provide the TINs of partners on a Form 1065 Schedule K-1 or the requirement to provide the TINs of shareholders on a Form 1120S Schedule K-1.

Treas. Reg. § 301.6109-1(d) refers to IRC §§ 6721-6724 for the appropriate penalties for failing to supply a TIN.

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IRC § 6721 establishes a penalty for failing to timely file a correct information return. The penalty generally can be as high as \$50 for each failure but with a limitation, dependent on how soon the failure is corrected and on the gross receipts of the person who failed to comply, on the total amount that may be imposed in any calendar year. In cases involving intentional disregard of the filing requirements, the penalty can be higher and there is no limit on the total amount of the penalty that may be applied in any calendar year.

IRC§ 6722 establishes a penalty for failing to timely provide a payee with a correct payee statement. Generally, the penalty is \$50 for each failure but the total amount that may be imposed is limited to \$100,000 during any calendar year. In cases involving intentional disregard of the filing requirements, the penalty is \$100 for each failure and there is no limit on the total amount of the penalty that may be applied in any calendar year.

IRC § 6723 establishes a penalty for failing to timely comply with a specified information reporting requirement. The penalty under section 6723 is \$50 for each failure but the total amount that may be imposed is limited to \$100,000 during any calendar year.

IRC § 6724(d) provides definitions that are to apply to sections 6721, 6722, and 6723.

The section 6721 penalty applies to failures to timely file a correct information return. Section 6724(d)(1) provides a definition for "information return" that applies to section 6721. The definition in section 6724 does not include either the Form 1065 Schedule K-1 or the Form 1120S Schedule K-1. For this reason, the penalty under section 6721, for failing to timely file a correct information return, would not be the appropriate penalty to assert for an incorrect Form 1065 or Form 1120S Schedule K-1.

The section 6722 penalty applies to failures to timely provide payees with correct payee statements. Section 6724(d)(2) provides a definition for "payee statement" that applies to section 6722. The definition in section 6724 includes, at subsection (d)(2)(A), the Form 1065 Schedule K-1 that is to be provided to each partner and the Form 1120S Schedule K-1 that is to be provided to each shareholder. The definition, however, does not include the Form 1065 or the Form 1120S Schedule K-1 that is submitted with a tax return filed with the Internal Revenue Service. For this reason, the penalty under section 6722, for failing to timely provide correct payee statements to a payee, would not be the appropriate penalty to assert for an incorrect Form 1065 or Form 1120S Schedule K-1 filed with the Internal Revenue Service. The section 6722 penalty may, however, be asserted for providing a partner or a shareholder with an incorrect Schedule K-1.

The section 6723 penalty applies to failures to timely comply with a specified information reporting requirement. Section 6724(d)(3) provides a definition for "specified information reporting requirement" that applies to section 6723. The definition in section 6724 includes "any requirement contained in the regulations prescribed under

section 6109 " for a person to include his TIN or that of another person on a "return, statement, or document (other than an information return or payee statement)." For this reason, the penalty under section 6723, for failing to timely comply with a specified information reporting requirement, would be the appropriate penalty to assert for an incorrect Form 1065 or Form 1120S Schedule K-1.

Section 6723(a) provides for the waiver of penalties under sections 6721, 6722, and 6723 upon a showing of reasonable cause.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Sam Berman at (202) 283-0304 if you have any further questions.

By: _____

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